

Small Business Administration

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particular age or range of ages (for example, *children, adult, older persons*, but not *student*).

(f) The term *agency* means a Federal department or agency that is empowered to extend financial assistance.

(g) The term *applicant* means one who applies for Federal financial assistance.

(h) The term *Federal financial assistance* includes: (1) Grants and loans of Federal funds; (2) the grant or donation of Federal property and interests in property; (3) the detail of Federal personnel; (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(i) The term *normal operation* means the operation of a business or activity without significant changes that would impair its ability to meet its objectives.

(j) The term *program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

(k) The term *recipient* means one who receives any Federal financial assistance administered by the Small Business Administration. (See Appendix A.) The term *recipient* also shall be deemed to include *subrecipients* of SBA financial assistance.

(l) The term *SBA* means the Small Business Administration.

(m) The term *subrecipient* means any business concern that receives Federal financial assistance from the primary recipient of such financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(n) The term *statutory objective* means the purposes of the legislation as stated in an act, statute or ordinance or can be shown in the legislative history of any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

[50 FR 41648, Oct. 11, 1985, as amended at 68 FR 51349, Aug. 26, 2003]

§ 117.4 Discrimination prohibited and exceptions.

(a) *General.* To the extent that this part applies, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any business or activity receiving Federal financial assistance.

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(b) *Specific discriminatory actions prohibited.* To the extent that this part applies, a recipient business or other activity may not, directly or through contractual arrangements, on the ground of age:

(1) Deny an individual any services, financial aid or other benefit provided by the business or other activity, except where sanctioned by one of the exceptions stated in § 117.4 (d), (e) or (f) of this section.

(2) Provide any service, financial aid or other benefit, except as sanctioned by one of the exceptions stated below, in such a way as to deny or limit persons in their efforts to participate in federally-assisted programs or activities;

(3) Treat an individual differently from others, except as sanctioned by an exception stated below, in determining whether the person satisfied any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid or other benefit provided by the business or activity.

(c) The specific forms of prohibited discrimination in paragraph (b) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(d) *Exception 1.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a business or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a business or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the business or activity to continue, or to achieve any statutory objective of the business or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

NOTE: All of the above factors must be met in order to exclude a business activity from the provisions of this part.

(e) *Exception 2.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age if the factor bears a direct and substantial relationship to the normal operation of the business or activity or to the achievement of a statutory objective.

(f) *Exception 3.* A recipient is permitted to take an action otherwise prohibited by paragraphs (a) and (b) of this section if an age distinction is contained in that part of a Federal, State or local statute or ordinance adopted by an elected general purpose legislative body which provides any benefits or assistance to, establishes criteria for participation in, or describes intended beneficiaries or target groups in age-related terms.

(g) The burden of proving that an age distinction or other action falls within the exceptions outlined in paragraphs (d), (e), and (f) of this section on the recipient of Federal financial assistance.

§ 117.5 Illustrative applications.

(a) *Discrimination in providing financial assistance.* Development companies and small business investment companies, which apply for or receive any financial assistance may not discriminate on the ground of age in providing financial assistance to small business concerns. Such discrimination prohibited by § 117.4 includes but is not limited to the failure or refusal, because of the age of the applicant, or the age of the applicant's principal owner or operating official to extend a loan or equity financing to any business concern; or, in the case of financing which has actually been extended, the failure or refusal because of the age of the recipient, or the age of recipient's principal owner or operating official to accord the recipient fair treatment and the